

FACT SHEET
**Prevention of Significant Deterioration Permitting for Greenhouse Gases: Providing
Option for Rescission of EPA-Issued Tailoring Rule Step 2 Prevention of Significant
Deterioration Permits**

ACTION

- On April 30, 2015, the Environmental Protection Agency (EPA) issued a direct final rule to narrowly amend the permit rescission provisions in the federal Prevention of Significant Deterioration (PSD) regulations. This action will allow the rescission of Clean Air Act PSD permits issued by the EPA or delegated state and local permitting authorities under Step 2 of the Greenhouse Gas Tailoring Rule.
- In *UARG v. EPA*, the U.S. Supreme Court said that the EPA may not treat greenhouse gases (GHG) as an air pollutant when determining whether a source (or modification of a source) is required to obtain a PSD preconstruction permit or title V operating permit. The Court determined that the EPA regulations implementing that approach for determining whether a PSD or title V permit is necessary (i.e., Step 2 of the Tailoring Rule) are invalid.
- Based on that opinion, the D.C. Circuit vacated certain provisions implementing Step 2 of the Tailoring Rule. As a result, “anyway sources” – those that trigger PSD permitting requirements based on emissions of other air pollutants and also have GHG emissions above the current threshold still must have carbon pollution limits in their permits. “Step-2” sources, those that triggered permitting requirements based solely on their GHG emissions, no longer are required to get a permit.
- This rule does not rescind any permits. The rule only provides the regulatory mechanism that the EPA and delegated state and local permitting authorities need to rescind PSD Step 2 permits issued under the invalid regulations. These permitting agencies already have the necessary regulatory authority to revise any title V permits that incorporated PSD Step 2 permitting requirements.
- On July 24, 2014 and December 19, 2014, the EPA issued memoranda that announced the Agency’s preliminary views and next steps on the application of PSD to GHGs following the *UARG v. EPA* Supreme Court decision, including our intent to amend the rescission regulations to enable rescission of Step 2 permits. The memoranda can be found on our GHG permitting website: <http://epa.gov/nsr/ghgpermitting.html>.
- The EPA is issuing a direct final rule without a prior proposed rule because the Agency views this as a non-controversial amendment.

BACKGROUND

- Congress established the New Source Review (NSR) program as part of the 1977 Clean Air Act (CAA) Amendments. NSR is a preconstruction permitting program that serves two important purposes:
 1. It ensures the maintenance of air quality standards when major stationary sources such as factories, industrial boilers and power plants are constructed or modified. In areas that do not meet the national air quality standards, nonattainment NSR ensures that new emissions do not slow progress toward cleaner air. In areas that meet the standards, including pristine areas like national parks, NSR's PSD program ensures that new emissions will not cause air quality to deteriorate significantly and will continue to attain air quality standards.
 2. The NSR program ensures that state of the art control technology is installed at new plants or at existing plants that are undergoing a major modification.
- On June 3, 2010, the EPA published the final Tailoring Rule, which phased in permitting requirements for greenhouse gas emissions from stationary sources under the CAA permitting programs. The final Tailoring Rule set thresholds for GHG emissions that define when permits under the NSR PSD and title V permit programs were required for new and existing industrial facilities based on the level of greenhouse gas emissions from a source.
- Step 1 of the Tailoring Rule (January 2, 2011 to June 30, 2011) only applied to sources that were subject to the permitting programs before greenhouse gases were regulated under the Clean Air Act (i.e., those sources that were newly-constructed or modified in a way that significantly increased emissions of a pollutant other than GHGs). During this time, no sources were subject to CAA permitting requirements due solely to GHG emissions.
- Step 2 of the Tailoring Rule began on July 1, 2011, and allowed PSD and title V requirements to apply to additional sources based solely on GHG emissions if those emissions exceeded certain regulatory limits. The Step 2 permitting regulations for GHG-only sources are the portion of the GHG permitting regulations that the U.S Supreme Court found to be invalid in *UARG v EPA*. This regulation authorizes rescission of PSD permits issued by EPA and delegated permitting authorities to PSD Step 2 sources.

ADDITIONAL INFORMATION

- Interested parties can download information on this action from EPA's Web site at: <http://epa.gov/nsr/actions.html>.
- The notice of proposed rulemaking and other background information are also available either electronically in www.regulations.gov, EPA's electronic public docket and comment system. Docket ID No. is EPA-HQ-OAR-2015-0071.